

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Idaho Power Company

Project No. 1971-094

ORDER GRANTING REHEARING

(Issued December 21, 2004)

1. On September 7, 2004, Idaho Power Company filed a timely request for rehearing of an August 6, 2004, Commission order granting a petition by American Rivers and other groups (collectively, "American Rivers"). The petition asked the Commission to consult formally with the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration (NOAA Fisheries), pursuant to the Endangered Species Act (ESA),¹ with respect to the ongoing impacts of the Hells Canyon Project No. 1971 on listed salmonid species and their habitat.²
2. On October 26, 2004, Idaho Power filed a request for the Commission to defer action on the request for rehearing. The company stated that it was engaged in settlement discussions with resource agencies and other intervenors regarding both interim and long-term issues raised by American Rivers' petition and by Idaho Power's pending relicense application for the Hells Canyon Project. According to Idaho Power, deferral would prevent the waste of the Commission's and the parties' resources that would be occasioned by any appeal of an order on rehearing.
3. On October 27, 2004, the Commission granted Idaho Power's request, and deferred acting on the request for rehearing until December 1, 2004.³ We stated that if a settlement had not been reached by the point, we would be prepared to act.

¹ 16 U.S.C. § 1531 *et seq.*

² *See* 108 FERC ¶ 61,158 (2004).

³ 109 FERC ¶ 61,077.

4. On November 24, 2004, Idaho Rivers United, American Rivers, and Idaho Power, with the concurrence of the members of the Hells Canyon Settlement Working Group,⁴ filed a request for rehearing of the October 27 Deferral Order. The parties seek rehearing only to the extent of asking the Commission to further defer consideration for Idaho Power's request for rehearing, until January 15, 2005, to give the settlement group the opportunity to reach an agreement on interim operations at the Hells Canyon Project, which they hope to do by December 31, 2004.

5. As we stated in the October 27 Order, we are strongly in favor of settlements, particular in cases as hotly contested and complex as the Hells Canyon proceedings, although we also believe that it is not good policy to defer indefinitely action on matters that have been presented to us for resolution. The proposed short deferral, which will give the parties time to conclude negotiations, is reasonable and consistent with our policy, and we will grant it.

The Commission orders:

The request for rehearing, filed by Idaho Rivers United, American Rivers, and Idaho Power Company on November 24, 2004, is granted.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

⁴ The Settlement Working Group includes NOAA Fisheries, U.S. Fish and Wildlife Service, Bureau of Land Management, U.S. Forest Service, Nez Perce Tribe, Shoshone-Bannock Tribe, Shoshone-Pauite Tribe, Umatilla Tribe, Columbia River Inter-Tribal Fish Commission, State of Idaho, State of Oregon, J.R. Simplot Corporation, Industrial Customers of Idaho Power, Nampa and Meridian Irrigation District, Pioneer Irrigation District, Settler's Irrigation District, Payette Water Users Association, Idaho Water Users Association, Idaho Farm Bureau, Committee of Nine, Idaho Rivers United, American Rivers, and Idaho Power.